

From: Carl Michal
To: Microsoft ATR
Date: 12/13/01 5:34pm
Subject: Proposed Microsoft Settlement

Renata Hesse,
Trial Attorney, Suite 1200,
Antitrust Division, Department of Justice,
601 D St. NW,
Washington, DC 20530

I am writing to express my concerns with the proposed settlement to the Microsoft antitrust trial.

I believe that the settlement, as proposed, will not serve the public interest, and that additional features must be incorporated within it in order to ameliorate the current market conditions which contribute to Microsoft's maintenance of its monopolies.

Because the most successful competitors in recent years in product markets in which Microsoft holds a true or de facto monopoly (eg. personal computer operating systems, Internet browsers, and office productivity software) have arisen from the open source software community, I believe it is of extreme importance that any settlement protect and enhance this community's ability to produce products that provide end-users with viable choices.

In my reading of the proposed settlement, such protection is not provided. On the contrary, the settlement will serve to allow Microsoft to continue to hinder the open source software community's efforts.

The proposed settlement speaks of disclosure of APIs and licensing of intellectual property. I fear that any information disclosed by Microsoft will only be licensed to vendors or developers under conditions of a non-disclosure agreement, thus preventing the implementation of such protocols in an open source project or product.

This settlement, if implemented as proposed, will serve to entrench Microsoft's monopolies further, by allowing it to exclude the open source software community from any future technologies and APIs it develops. As this community is currently one of Microsoft's most serious competitors, it seems unbelievable that the proposed settlement will aid Microsoft in eliminating this "threat" to their monopolies.

As an example of the current "problem" of Microsoft's monopoly in the OS and office productivity software markets, I point to the ubiquitous ".doc" file. This one proprietary file format I believe is one of the cornerstones of Microsoft's OS/productivity suite monopoly. Many people I know in the academic and business communities

regularly purchase updated versions of Microsoft Windows and Microsoft Office for the sole reason that their correspondents send them .doc files as e-mail attachments. The options for importing these files into 3rd party applications are many; however, having personally tried a large number of such programs, both free and commercial, I can safely say that many work well some of the time, none work well all of the time. The continuing cycle of forced upgrades to maintain compatibility with correspondents lies at the heart of Microsoft's monopoly.

As a solution to this kind of problem, I believe that Microsoft should be compelled to disclose the specifications of the file formats used by its products to anyone who sends or receives files in such formats and requests the information.

Left unsolved, this problem is bound to be more severe in the future. It has been widely reported recently that Microsoft is considering moving to a yearly licensing-fee system for its OS and Office software. In this case, files created with licensed software and saved in proprietary formats may be permanently unavailable to the creator or owner of the data in the file if a user or company chooses to terminate its license. I may own the copyright of the work I create, but that is of little value if the only copy of the work in existence is one saved in a format to which I do not have access.

Of course the .doc file format is not the only proprietary file format Microsoft products use, and the arguments above apply equally well to other products and file formats. The .doc format is likely the most important however, because text-based documents appear to be the most commonly shared and transmitted.

A second cornerstone of Microsoft's monopoly is the fact that many computer manufacturers will not sell computer hardware without a Microsoft OS. I understand that the proposed settlement will prevent Microsoft from entering into exclusive arrangements with vendors, but I believe that stronger protections are required.

If Microsoft's agreements with computer vendors forced the vendor to disclose to the computer purchaser the price of the Microsoft products included, it would help consumers choose products and vendors that were appropriate to their needs. As an example, I point to Dell which will, as far as I can tell, not sell a computer without a Microsoft OS and office productivity suite. If purchasers knew that without these products they could save some number of dollars, that now often amounts to a sizeable percentage of the computer package purchase price, they could apply pressure to the vendor to provide alternative (likely less expensive) products. Microsoft has stated concerns that selling computers without operating systems equates to software piracy. This assertion is absurd, and has become irrelevant with Microsoft's newest release of Windows XP, which requires license activation.

Having consumers and end-users with more information is clearly in the public interest. All of what is suggested here concerns supplying information that enables computer users to make informed decisions, and to access their own work on their own computer.

In summary, I believe the proposed settlement is seriously lacking, and will, if implemented as proposed, aid Microsoft in its efforts to hinder its most viable competitors. Any successful settlement must protect the rights of computer users to choose the products they desire to access their data.

Sincerely,

Carl Michal

Carl Michal
Department of Physics & Astronomy
University of British Columbia
411-6224 Agricultural Rd
Vancouver, BC
Canada V6T 1Z1
Tel: (604) 822-2432
Lab: (604) 822-3898
Fax: (604) 822-5324
Email: michal@physics.ubc.ca